

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

MARK A. ARTHUR, CIRILO MARTINEZ,
PARI NAJAFI and HEATHER MCCUE on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

SALLIE MAE, INC.,

Defendant.

JUDITH HARPER,

Plaintiff/Intervenor,

v.

ARROW FINANCIAL SERVICES, LLC,

Defendant.

NO. C10-0198 JLR

**[PROPOSED] ORDER CERTIFYING
PROVISIONAL SETTLEMENT
CLASS, PRELIMINARILY
APPROVING AMENDED CLASS
ACTION SETTLEMENT AND
PROVIDING FOR NOTICE TO THE
SETTLEMENT CLASS**

WHEREAS, a putative class action is pending in this Court entitled *Mark A. Arthur, Cirilo Martinez, Pari Najafi, and Heather McCue v. Sallie Mae, Inc., and Judith Harper v. Arrow Financial Services, LLC*, Case No. C10-0198 JLR (the “Action”);

WHEREAS, Mark A. Arthur, Cirilo Martinez, Pari Najafi, and Heather McCue (collectively, “Plaintiffs”), and Defendant Sallie Mae, Inc. (collectively “the Parties”), have

[PROPOSED] ORDER CERTIFYING PROVISIONAL
SETTLEMENT CLASS, PRELIMINARILY APPROVING
AMENDED CLASS ACTION SETTLEMENT AND PROVIDING
FOR NOTICE TO THE SETTLEMENT CLASS - 1
CASE No. C10-0198 JLR

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1 agreed, subject to Court approval following notice to the proposed Settlement Class (as
2 described in Paragraph 6 below) and a hearing, to settle this Action upon the terms and
3 conditions set forth in the amended settlement agreement lodged with this Court;

4 WHEREAS, this Court has reviewed the amended settlement agreement, as well as the
5 files, records and proceedings to date in this matter;

6 WHEREAS, for purposes of this Order, capitalized terms used below shall have the
7 meaning ascribed to them in the amended settlement agreement, unless otherwise defined; and

8 WHEREAS, for purposes of the Action, this Court has subject matter and personal
9 jurisdiction over the parties, including all Settlement Class Members.

10 NOW, THEREFORE, based on this Court's review of the Amended Agreement and all
11 of the files, records, and proceedings herein, the Court concludes, upon preliminary
12 examination, that the Amended Agreement and Amended Settlement appear fair, reasonable,
13 and adequate, and within the range of reasonableness for preliminary settlement approval, and
14 that a hearing should and will be held after notice to the Settlement Class to confirm that the
15 Amended Agreement and Amended Settlement are fair, reasonable and adequate and to
16 determine whether the Amended Settlement should be approved and final judgment entered in
17 the Action based upon the Amended Agreement.

18 IT IS HEREBY ORDERED THAT:

19 1. Preliminary Approval of Proposed Amended Settlement. The Amended
20 Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and
21 adequate and within the range of reasonableness for preliminary settlement approval. The
22 Court finds that: (a) the Amended Agreement resulted from extensive arm's length
23 negotiations; and (b) the Amended Agreement is sufficient to warrant notice of the Amended
24 Settlement to persons in the Settlement Class and a full hearing on the approval of the
25 Amended Settlement.
26

2. Class Certification for Settlement Purposes Only. Pursuant to Federal Rule of Civil Procedure 23(c), the Court conditionally certifies, for settlement purposes only, the following Settlement Class:

All persons to whom, on or after October 27, 2005 and through September 14, 2010, Sallie Mae, Inc. or any other affiliate or subsidiary of SLM Corporation placed a non-emergency telephone Call to a cellular telephone through the use of an automated dialing system and/or an artificial or prerecorded voice. Excluded from the Settlement Class are SLM Corporation, Sallie Mae, Inc. and any other affiliate or subsidiary of SLM Corporation, and any entities in which any such companies has a controlling interest, the Judge to whom the Action is assigned and any member of the Judge's staff and immediate family, as well as all persons who validly request exclusion from the Settlement Class.

In connection with this conditional certification, the Court makes the following preliminary findings:

- (a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;
- (b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether this settlement should be approved;
- (c) Plaintiffs' claims appear to be typical of the claims being resolved through the proposed settlement;
- (d) Plaintiffs appear to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the proposed settlement;
- (e) For purposes of determining whether the Amended Settlement is fair, reasonable and adequate, common questions of law and fact appear to predominate over questions affecting only individual persons in the Settlement Class. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) For purposes of settlement, certification of the Settlement Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Settlement Class.

3. Class Representatives. Plaintiffs are designated as class representatives for the Settlement Class.

4. Class Counsel. The Court appoints Lieff Cabraser Heimann & Bernstein, LLP, Meyer Wilson Co., LPA, Terrell Marshall Daudt & Willie PLLC, Hyde & Swigart, Kazerouni Law Group, and Law Offices of Douglas J. Campion as counsel for the Settlement Class. The Court finds that counsel is competent and capable of exercising all responsibilities as Class Counsel for the Settlement Class.

5. Settlement Hearing. A final approval hearing (the "Settlement Hearing") shall be held before the Honorable James L. Robart, Courtroom _____, _____, on _____, 2012, at _____, as set forth in the notice to the Settlement Class (described in Paragraph 6 below), to determine whether the Amended Settlement is fair, reasonable and adequate and should be approved. Papers in support of final approval of the Amended Settlement, the incentive award to Plaintiffs and Class Counsel's application for an award of attorneys' fees, costs and expenses (the "Fee Application") shall be filed with the Court according to the schedule set forth in Paragraph 11 below. The Settlement Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Settlement Hearing, the Court may enter a settlement order and final judgment in accordance with the Amended Agreement that will adjudicate the rights of the Settlement Class Members with respect to the Released Claims being settled.

6. Class Notice. Class Notice shall be sent within thirty (30) days following entry of this Order.

(a) E-mail Notice. The Claims Administrator and/or Sallie Mae has provided or will provide individual notice to all persons in the Settlement Class whose

1 extensions of credit were owned or serviced by Sallie Mae or any other affiliate or subsidiary of
 2 SLM Corporation, between October 27, 2005 and the date that the original Preliminary
 3 Approval Order was entered by the Court, via either E-mail Notice, Long-Form Mail Notice,
 4 Short-Form Mail Notice, Notice to Claimants, or Notice to Opt-Outs. E-mail Notice has been
 5 and will be sent via electronic mail, to the most recent email address as reflected in reasonably
 6 available computerized account records of Sallie Mae or its affiliates, to all persons in the
 7 Settlement Class for whom such records exist and who have not opted out of receiving
 8 electronic mail from Sallie Mae, in accordance with Sallie Mae's currently existing email opt-
 9 out policies.

10 (b) Mail Notice. Long-Form Mail Notice has been sent and Short-Form
 11 Mail Notice will be sent, via direct mail, to the most recent mailing address of Settlement Class
 12 Members for whom Sallie Mae or its affiliates do not have an email address, as reflected in
 13 reasonably available computerized account records of Sallie Mae or its affiliates, and/or who
 14 have opted out of receiving emails from Sallie Mae, in accordance with Sallie Mae's currently
 15 existing email opt-out policies, and to those Original Settlement Class Members whose emails
 16 are undeliverable. Skip tracing has been and shall be performed by the Claims Administrator
 17 for all returned mail; all costs of skip tracing will be considered Settlement Costs and deducted
 18 from the Fund. At Sallie Mae's discretion, subject to approval of *Arthur Counsel* (which
 19 approval shall not be unreasonably withheld), the E-mail Notice and Mail Notice has been or
 20 may be provided by way of a bill-stuffer in a periodic or billing statement, a solo electronic
 21 mailing or direct mailing, or a combination thereof.

22 (c) Publication Notice. The Claims Administrator has published notice of
 23 the original Settlement and will publish a notice of the Amended Settlement in two separate
 24 national editions of *USA Today* and one national edition of the U.S. *Wall Street Journal*. Sallie
 25 Mae has contributed \$45,000 toward these publications in addition to the Fund in order to
 26 provide Class Notice to persons in the Settlement Class who do not have, and have not had, an

1 extension of credit owned or serviced by Sallie Mae, and who were not named as references on
 2 applications for extensions of credit. In January 2011, Class Counsel also agreed to reduce, and
 3 have reduced, their fee request from the Fund in the amount of \$45,000 in order to pay for
 4 additional notice to the Settlement Class with respect to the request for attorneys' fees, as
 5 directed by the Court.

6 (d) Internet Notice. The Claims Administrator has established and will
 7 maintain a Settlement Website dedicated to the Amended Settlement, on which the Long-Form
 8 Mail Notice, Short-Form Mail Notice, Notice to Claimants, Notice to Opt-Outs, Publication
 9 Notice and Claim Form have been and/or will be posted. The E-mail Notice, Long-Form Mail
 10 Notice, Short-Form Mail Notice, Notice to Claimants, Notice to Opt-Outs, and Publication
 11 Notice have directed and/or shall direct recipients to the location of the Internet Notice. The
 12 Settlement Website has provided and shall provide for online submission of claims. The
 13 Settlement Website became active within five days after the Court's entry of the original
 14 Preliminary Approval Order and shall remain active until 180 days after the Effective Date.

15 7. Notice to Claimants. Notice will be sent via direct mail to those Original
 16 Settlement Class Members who have submitted valid Claim and/or Revocation Forms, advising
 17 them of the amendments to the settlement and noting that they need not take any additional
 18 steps in order to receive relief.

19 8. Notice to Opt-Outs. Notice will be sent via direct mail to those who have opted
 20 out of the Settlement, advising them of the amendments to the settlement, including that
 21 Delinquent Settlement Class Members who ultimately paid to a Released Party the full amount
 22 owed under the terms of the relevant agreement shall be eligible for a Cash Award, rather than
 23 a Reduction Award, and that opt-outs may be submitted by written request on or before the
 24 extended opt-out deadline.

25 9. Findings Concerning Class Notice. The Court finds that the foregoing program
 26 of Class Notice and the manner of its dissemination is the best practicable notice under the

1 circumstances and is reasonably calculated to apprise the Settlement Class of the pendency of
 2 this Action and their right to object to or exclude themselves from the Settlement Class. The
 3 Court further finds that the Class Notice program is reasonable, that it constitutes due, adequate
 4 and sufficient notice to all persons entitled to receive notice and that it meets the requirements
 5 of due process and Federal Rule of Civil Procedure 23.

6 10. Administration. The Claim Form and the claims submission process described
 7 in the Amended Agreement are hereby approved. In addition, the Court confirms that it is
 8 appropriate for Sallie Mae to provide the information necessary to provide the notice
 9 contemplated herein and to administer the settlement, including names, addresses, and account
 10 information.

11 11. Exclusion from the Settlement Class.

12 (a) Original Settlement Class Members possessed the right to exclude
 13 themselves from the Class by sending a written request to a designated address by December
 14 13, 2010 (within 90 days after entry of the original Preliminary Approval Order). Pursuant to
 15 the Amended Agreement, the opt-out deadline for all persons in the Settlement Class, including
 16 Original Settlement Class Members, shall be 90 days after entry of the Amended Preliminary
 17 Approval Order. In addition, any person in the Settlement Class who previously opted out shall
 18 have the right to revoke that opt-out by written request on or before the extended opt-out
 19 deadline. The E-mail Notice, Short-Form Mail Notice, Notice to Claimants, Notice to Opt-
 20 Outs, Publication Notice and Internet Notice will advise the Settlement Class of the opt-out
 21 deadline and of the right to revoke any previously submitted exclusion request. All persons in
 22 the Settlement Class who have not opted out or do not opt out in accordance with the terms set
 23 forth herein will be bound by all determinations and judgments in the Action.

24 (b) Exclusion requests must: (i) be signed; (ii) include the full name,
 25 address and account number(s) of the person(s) requesting exclusion (except that persons in the
 26 Settlement Class who do not have and have not had some lending or servicing relationship with

1 Sallie Mae or another affiliate or subsidiary of SLM shall not be required to include an account
 2 number); and (iii) include the following statement: "I/we request to be excluded from the class
 3 settlement in *Arthur et al. v. Sallie Mae, Inc.*, W.D. Wash., Case No. C10-0198 JLR." No
 4 request for exclusion will be valid unless all of the information described above is included.
 5 For any person in the Settlement Class who has more than one account, the exclusion request
 6 must specify each separate account. No person in the Settlement Class, or any person acting on
 7 behalf of or in concert or participation with that person, may exclude any other person from the
 8 Settlement Class.

9 (c) Delivery to Court. The Claims Administrator will retain a copy of all
 10 requests for exclusion. At or before the Final Approval Hearing, the Claims Administrator
 11 shall file with the Court a declaration that lists all of the opt-outs received.

12 (d) If 1,500 or more persons in the Settlement Class opt out of the Amended
 13 Settlement, then Sallie Mae, in its sole discretion, will have the right to terminate the Amended
 14 Settlement and the Amended Agreement. In the event that the Amended Settlement is
 15 terminated pursuant to this Paragraph, the parties will be returned to the status quo ante as if no
 16 Settlement had been negotiated or entered into.

17 (e) Revocation of Opt-Out. Written requests to revoke previously submitted
 18 opt-outs may be sent to a designated address within 90 days after entry of the Amended
 19 Preliminary Approval Order and must: (a) be signed; (b) include the full name, address and
 20 account number(s) of the person(s) revoking an exclusion (except that persons in the Settlement
 21 Class who do not have and have not had some lending or servicing relationship with Sallie Mae
 22 or any other affiliate or subsidiary of SLM Corporation shall not be required to include an
 23 account number); and (c) include the following statement: "I/we wish to revoke the previously
 24 submitted exclusion from the class settlement in *Arthur et al. v. Sallie Mae, Inc.*, W.D. Wash.,
 25 Case No. C10-0198 JLR."
 26

1 12. Objections and Appearances.

2 (a) Any Settlement Class Member may appear at the Final Approval
3 Hearing to argue that the proposed Amended Settlement should not be approved and/or to
4 oppose the application of Class Counsel for an award of attorneys' fees and the incentive
5 awards to the Plaintiffs.

6 (b) Pursuant to the Amended Agreement, the objection deadline for all
7 Settlement Class Members, including Original Settlement Class Members, shall be within 90
8 days after entry of the Amended Preliminary Approval Order. The E-mail Notice, Short-Form
9 Mail Notice, Notice to Claimants, Notice to Opt-Outs, Publication Notice and Internet Notice
10 will advise Settlement Class Members of this objection deadline. Settlement Class Members
11 may also seek information on the Settlement Website, which has contained and will contain
12 Class Notice, as well as Claim and Revocation Request Forms. Prior to the objection deadline,
13 the Settlement Website will also contain briefing and supporting materials submitted in support
14 of approval of the Amended Settlement and in support of Class Counsel's application for
15 attorneys' fees. In order to be heard at the Final Approval Hearing, Settlement Class Members
16 must have made any objection to the original settlement or the Amended Settlement in writing
17 and filed it with the Court. The objection also must have been or must be mailed to each of the
18 following, postmarked not later than the last day to file the objection: (a) *Arthur Counsel* –
19 Daniel M. Hutchinson, Lieff, Cabraser, Heimann & Bernstein, LLP, 275 Battery Street,
20 29th Floor, San Francisco, California, 94111; and (b) counsel for Sallie Mae – Lisa M.
21 Simonetti, Stroock & Stroock & Lavan LLP, 2029 Century Park East, 16th Floor, Los Angeles,
22 California, 90067.

23 13. Further Papers In Support of Settlement and Fee Application. Papers in support
24 of final approval of the Amended Settlement and Class Counsel's fee petition shall be filed no
25 later than 60 days after entry of the Amended Preliminary Approval Order. Any responses to
26

1 objections to the Amended Settlement and or Class Counsel's fee application shall be filed with
2 the Court 120 days after entry of the Amended Preliminary Approval Order.

3 14. Effect of Failure to Approve the Amended Agreement. In the event the
4 Amended Agreement is not approved by the Court, or for any reason the parties fail to obtain a
5 Final Judgment as contemplated in the Amended Agreement, or the Amended Agreement is
6 terminated pursuant to its terms for any reason, then the following shall apply:

7 (a) All orders and findings entered in connection with the Amended
8 Agreement shall become null and void and have no further force and effect, shall not be used or
9 referred to for any purposes whatsoever, and shall not be admissible or discoverable in any
10 other proceeding;

11 (b) The conditional certification of the Settlement Class pursuant to this
12 Order shall be vacated automatically and void; no doctrine of waiver, estoppel or preclusion
13 shall be asserted in any litigated certification proceedings in the Action; and the Amended
14 Agreement and its existence shall be inadmissible to establish any fact relevant to class
15 certification or any alleged liability of Sallie Mae for the matters alleged in the Action or for
16 any other purpose;

17 (c) Nothing contained in this Amended Preliminary Approval Order is, or
18 may be construed as, any admission or concession by or against Sallie Mae or Plaintiffs on any
19 point of fact or law; and

20 (d) Neither the Amended Settlement terms nor any publicly disseminated
21 information regarding the Amended Settlement, including, without limitation, the class notices,
22 court filings, orders and public statements, may be used as evidence for any purpose
23 whatsoever. In addition, neither the fact of, nor any documents relating to, Sallie Mae's
24 withdrawal from the settlement, any failure of the Court to approve the settlement and/or any
25 objections or interventions may be used as evidence for any purpose whatsoever.
26

1 15. Stay/Bar of Other Proceedings. All proceedings in this Action are stayed until
 2 further order of the Court, except as may be necessary to implement the terms of the Amended
 3 Settlement. Pending final determination of whether the Amended Settlement should be
 4 approved, Plaintiffs, all persons in the Settlement Class and persons purporting to act on their
 5 behalf are enjoined from commencing or prosecuting (either directly, representatively or in any
 6 other capacity) against any of the Released Parties any action, arbitration or proceeding in any
 7 court, arbitration forum or tribunal asserting any of the Released Claims.

8 16. Schedule of Future Events. Further settlement proceedings in this matter shall
 9 proceed according to the following schedule:

10 [Within 10 days of filing for preliminary	Sallie Mae to provide CAFA notice per 28
11 approval]	U.S.C. § 1715(b)
12 [Within 30 days of entry of this Order]	Deadline to provide Class Notice
13 [At least 30 days after entry of this Order	Deadline for filing and posting on
14 but within 60 days of entry of this Order]	Settlement Website of Plaintiffs' Final
15	Approval Motion and Class Counsel's
16	Application for an Award of Attorneys' Fees and Costs
17 [90 days after entry of this Order]	Last day for opt outs, revocation of opt
18	outs and objections to Amended
19 [120 days after entry of this Order]	Settlement
20	Deadline for the Parties to file responses
21 [within 165 days of this Order]	to objections
22	Last day to submit a Claim and/or
23 [At the Court's convenience but no earlier	Revocation Form
24 than April 6, 2012]	Final Approval Hearing / Noting Date

25 17. Effect of Prior Orders. This Order supersedes the Order issued on September
 26 14, 2010 and the Amended Order issued on September 17, 2010.

1 IT IS SO ORDERED.

2
3 Dated: October _____, 2011.

The Honorable James L. Robart
United States District Judge

5 Presented by:

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7

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23 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on October 11, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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13 *Attorneys for Objectors Patrick Sweeney and Sasha McBean*

14 DATED this 11th day of October, 2011.

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